CF0000064367

(2)

समक्ष माननीय उच्च न्यायालय जबलपुर मध्यप्रदेश

क्रिमिनल अपील क्र0- 1757 / 2000 Division Bench

अपील अन्तर्गत धारा 374(2) द0प्र0सं0

अपीलार्थी - चैतू पिता सोनसाय आयु लगभग 30 वर्ष
पेशा - खेती निवासी - बेंकटी थाना-कोण्डागांव
जिला- बस्तर (म0प्र0)

विरूद्ध

प्रत्यर्थी - मध्यप्रदेश शासन

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 1757/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 1757/2000

Appellant : Chetu

Versus

Respondent : State of Chhattisgarh

Shri Ranbir Singh with Shri Saurabh Dangi, Advocates for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor with Shri D.C. Pandey, Panel Lawyer for the State.

ORAL JUDGMENT
(10-11-2006)

Per L.C. Bhadoo, J

Accused Chetu has preferred this appeal questioning the legality and correctness of the judgment of conviction and order of sentence dated 23-5-2000 passed by the learned Sessions Judge, Jagdalpur in Sessions Trial No. 356/99 whereby the learned Sessions Judge after holding accused-appellant guilty for commission of offence punishable under Section 302 of I.P.C. for committing murder of Gadaram, sentenced him to undergo imprisonment for life.

2. Brief facts necessary for disposal of this appeal are that on the fateful day Balsingh had gone to market, whereas his wife Mahadei (P.W. 3) and dauther Ku.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 1757/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ramsila (P.W. 5) were working in the agricultural field, they saw that deceased Gadaram was standing there. Accused-appellant Chetu came on the scene carrying axe in his hand and attacked Gadaram with the axe on his head and chest, as a result of which Gadaram fell down and succumbed to the injuries spontaneously. The two witnesses namely P.W. 3 Mahadei and P.W. 5 Ramsila being frightened left for their house. When Balsingh returned his house from market, they informed him about the incident. He immediately went to Piladas-Village Kotwar and informed him about the incident. On receiving this information, Piladas along with Balsingh left for the scene of occurrence. On the way, Sarpanch Baisakhu met them. Balsingh informed him also about the incident. Piladas informed Patel Bondku also about the incident. They went near the place of occurrence and saw the body of Gadaram. Thereafter Piladas took the accused to Police Station, Kondagaon. Balsing also accompanied them and the matter was reported to the Police Station, Kondagaon by Balsingh vide intimation Ex. P-7, based on that, First Information Report Ex. P-6 was registered for commission of offence punishable under Section 302 of I.P.C. Investigating Officer left for the scene of occurrence. After giving notice to Panchas prepared the inquest report Ex. P-1 of body of Gadaram. While in the police custody accused gave memorandum Ex. P-3 under Section 27 of the Evidence Act and in pursuance of that, he got recovered the weapon of offence under Ex.P-4. Site plan was prepared by the

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 1757/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Investigation Officer. The body of Gadaram was sent for post mortem examination to Primary Health Centre, Kondagaon under Ex. P-11 where Dr. S. Lonhare conducted post mortem and prepared post mortem report Ex. P-8. He opined that the cause of death is excessive hemorrhage and the death was homicidal in nature. Weapon of offence i.e. axe was also examined by the doctor and he opined that it was possible to cause the injury which was found on the head of the deceased with the axe in question. After usual investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kondagaon who in turn committed the case to the Sessions Judge, Jagdalpur.

3. The prosecution examined 8 witnesses in order to establish charge against the accused. Statement of the accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and submitted that witnesses are liar and he has been falsely implicated in the crime.

4. Learned Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused-appellant.

5. We have heard Shri Ranbir Singh, learned counsel appearing on behalf of the appellant and Shri Deo, learned Addl. Public Prosecutor on behalf of the State.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 1757/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. Counsel for the appellant did not dispute the homicidal death of Gadaram. Apart from that, the evidence of eye-witnesses namely P.W. 3 Mahadei and P.W. 5 Ramsila as also the medical evidence of P.W. 6 Dr. S. Lohnare establishes that the death of Gadaram was homicidal in nature.

7. So far as involvement of the accused-appellant in crime in question is concerned, the conviction rests on the evidence of the eye-witnesses P.W. 3 Mahadei and P.W. 5 Ramsila. Main attack of the learned counsel for the accused-appellant was that both the eye-witnesses have stated that they saw towards the scene of occurrence after hearing the sound and at that time, the accused was at a distance of about 3-4 steps and Gadaram was lying on the ground. Therefore, actually they had not witnessed the accused assaulting the deceased. He further argued that P.W. 5 Ku. Ramsila has stated that the accused assaulted thrice i.e. twice on head and once on back whereas as per medical evidence, there was one fracture on occipital temporal bone of skull and there was one contusion on the chest and as such, the medical evidence does not corroborate the evidence of these eye-witnesses. Therefore, the prosecution has failed to connect the accused with the crime in question.

8. On the other hand, learned counsel for the State supported the judgment of the trial Court.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A. No. 1157/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. In order to appreciate the arguments advanced by the counsel for the respective parties, we have perused the evidence of eye-witnesses namely P.W. 3 Mahadei and P.W. 5 Ramsila. As per evidence of P.W. 3 Mahadei, they were working in the agricultural field at about 4.00 p.m. At that time, Gadaram came there, he enquired about her husband. She replied that he had gone to market. Thereafter, when Gadaram went at some distance, at that time, accused Chetu came on the scene carrying axe and attacked on the head of Gadaram, as a result on which, he fell down. Being frightened, they left the scene. In cross-examination, she has stated that at the time of incident, they were at a distance of 25 ft. She has further stated that she does not know how dispute started and who first started the dispute. It is correct to say that when the sound of fall was heard by them, then they saw that Gadaram was lying and Chetu was leaving the place. Seeing Chetu going from the place of occurrence, they thought that he is the person who has attacked the deceased. She did not see the accused attacking the deceased. When she saw the accused going, he was at a distance of 3-4 paces from the place of occurrence, no other person was there. Whereas P.W. 5 Ramsila has stated that she along with her mother were working in the field, the accused came with the axe and attacked Gadaram with the axe on the head from the side of *Mundi* and as a result of which, Gadaram fell down and they left the scene. In the cross-examination, she stated that

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G. A. No. 1757/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when she saw towards the scene of occurrence after hearing the sound, the accused was at a distance of 15-20 ft. from the place of occurrence, therefore, it is incorrect to say that because of that, they thought that the accused assaulted the deceased, but in fact she saw the accused assaulting the deceased. Therefore, in the first instance, the evidence of both these witnesses establishes the presence of accused at the place of occurrence. Even though, P.W. 3 Mahadei in cross-examination has stated that after hearing sound, she saw towards the place of occurrence and the accused was going at a distance of 3-4 paces. But P.W. 5 Ramsila even in cross-examination has categorically stated that she saw the accused assaulting the deceased. There is nothing on record to discredit the evidence of these two witnesses. P.W. 5 Ramsila has categorically stated that she saw the accused assaulting the deceased. As far as the arguments advanced by the counsel for the appellant that P.W. 5 Ramsila has stated that accused assaulted thrice whereas as per medical evidence only two injuries were on the body of the deceased, is concerned, in our considered opinion, there is no material contradiction in the ocular and medical evidence. It depends on the particular facts and circumstances that how the witness observed the incident, more over, she has stated that the accused assaulted on the head and in fact, the injury has been found on the head and the other injury was on the chest instead of back, there is every possibility that there might have any mistake in observance of

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 1757/2000

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assault or on account of lapse of time, this witness has stated so in her evidence, but this fact itself is not sufficient to discard the evidence of this witness. Such minor contradictions happen many times. There is nothing on record through which it can be said that these witnesses have deposed against the accused on account of any animosity or have any grudge against him so as to implicate him in such a heinous crime. As far as the other arguments advanced by the learned counsel for the appellant that the injury inflicted on the head of the deceased was with a blunt and hard object as per the medical evidence and in fact, prosecution case is that the accused has assaulted with axe, therefore there is variance in ocular and medical evidence, if we look into the evidence of P.W. 5 Ramsila, she has categorically stated that the accused attacked the deceased with the axe from side of *Mundi*. *Mundi* is rear portion of axe i.e. blunt side of the axe, therefore, we do not find any variance between the ocular and medical evidence. Therefore, involvement of the accused in the crime in question has been established beyond the shadow of doubt.

10. Counsel for the accused-appellant argued that as per injury report, accused assaulted once on the head, which is said to be fatal injury and the other injury was simple in nature, therefore, the offence against the accused does not travel beyond Section 304 Part II of I.P.C. He also argued that there is nothing on record which shows that the accused had intention to cause death of Gadaram. In order to bring the

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 1757/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

case within exception 4 to Section 300 of I.P.C. it is to be established that the accused attacked without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel. If we look into the prosecution evidence, which has been referred above, there is no iota of evidence which shows that there was any quarrel between the accused and the deceased or the deceased in any manner infuriated the accused. In fact the accused came with axe and without any rhyme and reason attacked the deceased with the axe which indicates that the accused came with preparation carrying axe in his hand and without waiting for a moment, he attacked the deceased on his head with the axe, therefore, the act of the accused does not fall under Exception 4 of Section 300 of I.P.C.

11. So far as intention is concerned, intention of accused can be gathered from the facts and circumstances of each case i.e. weapon of offence used, manner in which the accused assaulted the deceased, part of body where the accused attacked. In this case, the accused attacked the deceased with a deadly weapon of axe, that too in vital part i.e. head of the deceased and as a result of the assault made by the accused, occipital temporal bone was fractured and deceased died spontaneously. Therefore, above facts suggest that the accused assaulted the deceased with the deadly weapon with intention to cause death of the deceased. In the result, we do not

P.T.O.

(34)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 1757/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	find any illegality or infirmity in the judgment of the trial Court. The appeal is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Pathak) —

21.11.07

10.1.08

P.T.O.